

Federal Acquisition Regulation

14.404-1

time to properly cleared individuals who represent bidders. No public record shall be made of bids or bid prices received in response to classified invitations for bids.

[67 FR 6114, Feb. 8, 2002]

14.402-3 Postponement of openings.

(a) A bid opening may be postponed even after the time scheduled for bid opening (but otherwise in accordance with 14.208) and—

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or Government equipment blackout or malfunction when bids are due); or

(2) Emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid openings as scheduled is impractical.

(b) At the time of a determination to postpone a bid opening under subparagraph (a)(1) above, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the invitation, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

(c) In the case of paragraph (a)(2) of this section, and when urgent Government requirements preclude amendment of the solicitation as prescribed in 14.208, the time specified for opening of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. In such cases, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining “late bids” under 14.304. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

[48 FR 42171, Sept. 19, 1983, as amended at 60 FR 34738, July 3, 1995; 61 FR 31619, June 20, 1996]

14.403 Recording of bids.

(a) Standard Form 1409, Abstract of Offers, or Optional Form 1419, Abstract of Offers—Construction (or automated equivalent), shall be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids may be limited to item numbers and bid prices. In preparing these forms, the extra columns and SF 1410, Abstract of Offers—Continuation, and OF 1419A, Abstract of Offers—Construction, Continuation Sheet, may be used to label and record such information as the contracting activity deems necessary.

(b) Abstracts of offers for unclassified acquisitions shall be available for public inspection. Such abstracts shall not contain information regarding failure to meet minimum standards of responsibility, apparent collusion of bidders, or other notations properly exempt from disclosure to the public in accordance with agency regulations implementing subpart 24.2.

(c) The forms identified in paragraph (a) above need not be used by the Defense Fuel Supply Center for acquisitions of coal or petroleum products or by the Defense Personnel Support Center for perishable subsistence items.

(d) If an invitation for bids is cancelled before the time set for bid opening, this fact shall be recorded together with a statement of the number of bids invited and the number of bids received.

[48 FR 42171, Sept. 19, 1983, as amended at 54 FR 29280, July 11, 1989]

14.404 Rejection of bids.

14.404-1 Cancellation of invitations after opening.

(a)(1) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify

all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.

(3) As a general rule, after the opening of bids, an invitation should not be cancelled and resolicited due solely to increased requirements for the items being acquired. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new acquisition.

(b) When it is determined before award but after opening that the requirements of 11.201 (relating to the availability and identification of specifications) have not been met, the invitation shall be cancelled.

(c) Invitations may be cancelled and all bids rejected before award but after opening when, consistent with paragraph (a)(1) above, the agency head determines in writing that—

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies or services being contracted for are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see subpart 3.3 for reports to be made to the Department of Justice);

(8) No responsive bid has been received from a responsible bidder.

(9) A cost comparison as prescribed in OMB Circular A-76 and subpart 7.3 shows that performance by the Government is more economical; or

(10) For other reasons, cancellation is clearly in the public's interest.

(d) Should administrative difficulties be encountered after bid opening that

may delay award beyond bidders' acceptance periods, the several lowest bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) should be requested, before expiration of their bids, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for resoliciting.

(e) Under some circumstances, completion of the acquisition after cancellation of the invitation for bids may be appropriate.

(1) If the invitation for bids has been cancelled for the reasons specified in subparagraphs (c) (6), (7), or (8) of this subsection, and the agency head has authorized, in the determination in paragraph (c) of this subsection, the completion of the acquisition through negotiation, the contracting officer shall proceed in accordance with paragraph (f) of this subsection.

(2) If the invitation for bids has been cancelled for the reasons specified in subparagraphs (c) (1), (2), (4), (5), or (10) of this subsection, or for the reasons in subparagraphs (c) (6), (7), or (8) of this subsection and completion through negotiation is not authorized under subparagraph (e)(1) of this subsection, the contracting officer shall proceed with a new acquisition.

(f) When the agency head has determined, in accordance with paragraph (e)(1) of this subsection, that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate (in accordance with part 15, as appropriate) and make award without issuing a new solicitation provided—

(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

[48 FR 42171, Sept. 19, 1983, as amended at 50 FR 1738, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 52790, Dec. 21, 1990; 60 FR 48248, Sept. 18, 1995; 62 FR 51230, Sept. 30, 1997]